

Amendment Under 37 C.F.R. § 1.111
Serial No.: 10/779,852
Sughrue Ref: Q79958

REMARKS

Claims 1-5, 9-12 and 17 are all the claims examined in the application. Claims 6-8, 13-16, 18 and 19 have been withdrawn from consideration as being directed to a non-elected invention which is being prosecuted in Divisional Application Serial No. 11/476,768.

Claims 1, 4 and 5 have been objected to as being indefinite. With respect to claim 1, the Examiner states that it is not clear whether the combination/sub-combination in claim 1 is intended to claim the carbon dioxide sensor. Claim 1 has been amended to reflect that the light emitter of the sensor is not part of the airway adapter, which is intended to be covered by claim 1.

With respect to claim 4, the Examiner indicates that it is not clear what the “extending direction” of the shaft member refers to. Applicants submit that this direction corresponds to the longitudinal direction of the shaft member. Accordingly, claim 4 has been amended hereinabove. Finally, Applicants have amended claim 3 to address the informality noted by the Examiner.

Applicants thank the Examiner for indicating that claims 10-12 contain allowable subject matter. On the other hand, the Examiner has rejected the remaining claims on reference grounds. In particular, the Examiner has rejected claim 1 under § 103(a) as being unpatentable over Star (U.S. Patent Application Publication No. 2005/0245836) in view of Phillips (U.S. Patent No. 6,726,637). Claims 2, 4-5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Star in view of Phillips, as applied to claim 1 above, and further in view of Cannon (U.S. Patent Application Publication 2004/0003816). Claim 3 is rejected under 35

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U.S.C. § 103(a) as being unpatentable over Star in view of Phillips and Cannon, as applied to claim 2 above, and further in view of Yang (U.S. Patent No. 6,739,218). Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Star in view of Phillips as applied to claim 1 above, and further in view of Starr (U.S. Patent No. 6,849,049). Finally, claim 17 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Star in view of Phillips and further in view of Yamamori (U.S. Patent Application Publication 2002/0122746).

Applicants point out to the Examiner that the earliest possible U.S. filing date of Star '836 is September 5, 2003, corresponding to the filing date of Continuation-In-Part Application No. 10/656,898. On the other hand, the priority date of the subject application is earlier, February 18, 2003. Accordingly, in order to remove this reference as prior art, Applicants submit a Certified English translation of the Priority Document. Applicants submit that this should overcome all of the prior art rejections entered by the Examiner.

In view of the foregoing, it is respectfully submitted that all claims pending in the application are allowable and that the application should be passed to issuance at the earliest possible convenience. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

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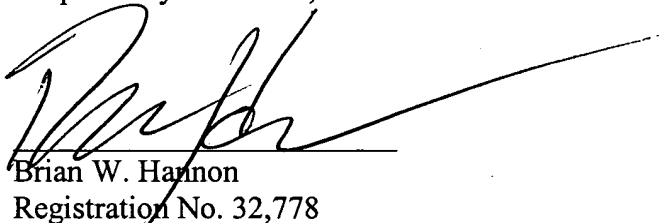
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